

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIKE WESLEY,

Plaintiff, No. CIV S-04-2346 GGH

vs.

JO ANNE B. BARNHART,
Commission of Social Security,

Defendant.

FINDINGS AND RECOMMENDATIONS

16 _____ /
17 This action was referred to the undersigned pursuant to Local Rule 72-302(c)(15).

18 Pursuant to Federal Rule of Civil Procedure 4(m), if a defendant is not served within 120 days of
19 filing the complaint, the court may dismiss the complaint without prejudice as to that defendant.
20 In the scheduling order filed November 2, 2004, plaintiff was directed to complete service of
21 process on defendant within 20 days. This action was filed November 2, 2004, and plaintiff has
22 not yet served defendant with summons. By order filed March 11, 2005, plaintiff was directed to
23 show cause within 20 days why this action should not be dismissed for failure to serve defendant.
24 Subsequently, service was not effected. Plaintiff did not respond to the order to show cause and
25 consequently has shown no good cause why defendant has not been served.

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Accordingly, the Clerk of the Court is directed to assign to this case a United States District Judge, and IT IS HEREBY RECOMMENDED that this case be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten (10) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within ten (10) days after service of the objections. Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: 5/3/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWSS
UNITED STATES MAGISTRATE JUDGE

GGH:035
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